Cheong Moe Leong & Anor v Personal Representative of Saw Gaik Beow, deceased & Ors

HIGH COURT (PULAU PINANG) — ORIGINATING SUMMONS NO 24–299 OF 2002

SU GEOK YIAM JC

14 MAY 2003

Civil Procedure *— Judgments and orders — Conditional judgments — Whether party had abandoned benefit of conditional judgment — Rules of the High Court 1980 O 45 r 10*

Civil Procedure *— Pleadings — Intitulement on summons — Failure of plaintiff to intitule summons — Whether fatal — Whether other party prejudiced by such failure — Rules of the High Court 1980 O 7 r 2(1A)*

The plaintiffs had, at one time, been the registered proprietors of a piece of land in Georgetown, Penang ('the property'). Saw Gaik Beow, since deceased, had commenced a civil suit against the plaintiffs and their father claiming the property under an agreement dated April 1964. In June 1989, the High Court upheld the agreement and allowed Saw Gaik Beow's claim. The court ordered that, upon payment of the balance purchase price into court within 14 days from the date of the judgment, the agreement was to be specifically performed by the plaintiffs delivering to Saw Gaik Beow the issue document of title to the property and by executing a valid and registrable transfer of the property in favour of Saw Gaik Beow (see [1989] 3 MLJ 301). The plaintiffs' appeal was heard and dismissed by the then Supreme Court, and a transfer of the property was registered in favour of Saw Gaik Beow and the second defendant. Upon the death of Saw Gaik Beow, her share of the property was transferred to the third defendant pursuant to a distribution order and registered accordingly. In February 2000, the plaintiffs filed the present application. The plaintiffs alleged that Saw Gaik Beow had failed to effect payment of the balance purchase price within the time limited for doing so. The memorandum of transfer of the property from the plaintiffs to Saw Gaik Beow and the second defendant was thus void for want of consideration. Thus the plaintiffs sought, inter alia, a declaration that the defendants had abandoned the benefit of the said judgment and that the memorandum of transfer and the registration in favour of Saw Gaik Beow and the second defendant and the subsequent transfer in favour of the third defendant were void for want of consideration and/or in breach of the said judgment. The plaintiffs also sought an order that the memorandum of transfer, the registration of that transfer and the subsequent transfer be set aside forthwith and that the second and third defendants, as the registered proprietors of the property, do execute a valid transfer of the property in favour of the plaintiffs and do surrender the issue document of title in respect of the property to the plaintiffs.

Held, dismissing the plaintiffs' claim with costs:

(1) Order 7 r 2(1A) of the Rules of the High Court 1980 ('the RHC') expressly requires the particular rule of court and provisions of written law under which a court is being moved to be stated. Nowhere in the intitulement to the originating summons was any law or any order stated let alone a specific provision or rule, as the case may be, of the relevant written law or the RHC which the plaintiffs are relying on. It was only in the plaintiffs' written submissions that it is stated, for the very first time, that the plaintiffs were seeking to rely on O 45 r 10 of the RHC, s 340(2)(b) of the National Land Code and s 26 of the Contracts Act 1950 (see p 416B–C, F).

(2) The situation here was different from the situation envisaged by O 45 r 10 of the RHC. The defendants here were not seeking to obtain the benefit of the judgment. The property had already been transferred to the defendants. That was the benefit of the judgment obtained in the said civil suit. Thus, the submission that the defendants had abandoned the benefit of the judgment was without merit (see p 417D–E); *Talbot v Blindell and Ors* [1908] 2 KB 114 distinguished.

(3) It was clear that the judgment was a conditional one. The fulfilment of the condition was a necessary prerequisite to relief. However, the fact that the property had been transferred to Saw Gaik Beow and the second defendant, and upon the demise of Saw Gaik Beow, her share had been transferred to the third defendant, implied that Saw Gaik Beow had complied with the condition as to payment into court of the said balance purchase price within the time limited for doing so. (see p 417A–C).

(4) There was nothing in the transfer form to indicate or even suggest that the said balance purchase price had not been paid in the manner required under the judgment. On the contrary, under the caption 'in consideration of' it was expressly stated that the transfer was made in pursuant to the order of the High Court. The contention of the plaintiffs that the transfer was void for want of consideration was thus without merit (see p 418B–D).

(5) It was insufficient for the plaintiff to merely allege non-payment by Saw Gaik Beow. There was no affidavit from the plaintiffs' previous solicitors who were handling the matter to state that the said balance purchase price had not been paid. There was also no affidavit from the plaintiffs' current solicitors stating that a search on the court file pertaining to the civil suit showed that there had been no such payment made into court. The burden of proof was on the plaintiffs and the plaintiffs had failed to discharge that burden. The court accepted the defendants' contention, on a balance of probabilities, that it was unlikely the plaintiffs would have executed the transfer and handed over the document of title if the balance of the purchase price had not been paid (see pp 418D–E, 419A–C).

(6) Even assuming that the court was wrong in holding that the plaintiffs' claim was without merit, the court was satisfied that the plaintiffs were guilty of inordinate delay and that the plaintiffs' cause of action was time barred under s 6(3) of the Limitation Act 1953 as more than 12 years had elapsed since the last date for the payment of the balance purchase price into court (see p 419D–E).

[Bahasa Malaysia summary

Plaintif, pada suatu masa, adalah tuanpunya berdaftar sebuah tanah di Georgetown, Pulau Pinang ('hartanah tersebut'). Saw Gaik Beow, mendiang, telah memulakan satu tindakan sivil terhadap plaintif dan ayah mereka menuntut hartanah tersebut di bawah satu perjanjian bertarikh April 1964. Pada bulan Jun 1989, Mahkamah Tinggi telah mengesahkan perjanjian tersebut dan membenarkan tuntutan Saw Gaik Beow tersebut. Mahkamah telah memerintahkan bahawa, dengan bayaran baki harga belian ke mahkamah dalam masa 14 hari dari tarikh penghakiman, perjanjian tersebut hendaklah dilaksanakan secara specifik dengan plaintif menghantarkan kepada Saw Gaik Beow geran tanah yang dikeluarkan ke atas hartanah tersebut dan menandatangani borang pindahmilik yang sah dan yang dapat didaftarkan atas nama Saw Gaik Beow (lihat [1989] 3 MLJ 301). Rayuan plaintif telah didengar dan ditolak oleh Mahkamah Agung pada masa itu, dan pindahmilik hartanah telah didaftarkan bagi pihak Saw Gaik Beow dan defendan kedua. Dengan kematian Saw Gaik Beow, bahagiannya dalam hartanah tersebut telah dipindahmilik kepada defendan ketiga menurut satu perintah pembahagian dan didaftarkan seperti dikehendaki. Pada bulan Februari tahun 2000, plaintif telah memfailkan permohonan ini. Plaintif mendakwa Saw Gaik Beow telah gagal membuat bayaran baki harga belian dalam masa yang telah ditetapkan untuk membuat demikian. Memandangkan sedemikian, borang pindahmilik hartanah tersebut dari plaintif kepada Saw Gaik Beow dan defendan kedua adalah tidak sah kerana tiada balasan. Maka plaintif menuntut, antara lain, suatu deklarasi bahawa defendan telah mengabaikan manfaat penghakiman tersebut dan borang pindahmilik dan pendaftarannya di atas nama Saw Gaik Beow dan defendan kedua serta pindahmilik seterusnya di atas nama defendan ketiga adalah terbatal kerana tiada balasan dan/atau melanggar penghakiman tersebut. Plaintif juga menuntut suatu perintah bahawa borang pindahmilik, pendaftarannya serta pemindahan milik seterusnya diketepikan dengan serta merta dan bahawa defendan-defendan kedua dan ketiga, sebagai tuan punya berdaftar hartanah tersebut, diwajibkan menandatangani suatu pemindahan milik hartanah tersebut ke atas nama plaintif dan menyerahkan geran tanah yang dikeluarkan ke atas hartanah tersebut kepada plaintif.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Aturan 7 k 2(1A) Kaedah Mahkamah Tinggi 1980 ('KMT') secara nyata menghendaki aturan mahkamah tertentu dan peruntukan undang-undang yang menjadi asas sesuatu permohonan dinyatakan. Dalam tajuk kepada saman pemula tersebut tiada sebarang undang-undang atau aturan am disebutkan, mahupun suatu peruntukan khas atau aturan, yang mana terpakai, peruntukan undang-undang atau aturan yang plaintif ingin bergantung kepada. Hanyalah di dalam hujah-hujah bertulis telah plaintif menyatakan, buat kali pertama, bahawa plaintif ingin bergantung kepada A 45 k 10 KMT, s 340(2)(b) Kanun Tanah Negara dan s 26 Akta Kontrak 1950 (lihat ms 416B–C, F).

(2) Situasi di sini berbeza dari situasi yang dibayangkan dalam A 45 k 10 KMT. Defendan di sini tidak menuntut manfaat sesuatu penghakiman. Hartanah tersebut telahpun dipindahmilik kepada defendan-defendan. Itulah manfaat penghakiman yang diperolehi dalam tindakan sivil tersebut. Maka hujah bahawa defendan telah mengabaikan manfaat penghakiman tersebut adalah tanpa sebarang merit (lihat ms 417D–E); *Talbot v Blindell and Ors* [1908] 2 KB 114 dibeza.

(3) Adalah jelas bahawa penghakiman tersebut adalah suatu penghakiman bersyarat. Pematuhan syarat tersebut adalah suatu keperluan sebelum mendapatkan relif. Walau bagaimanapun, fakta bahawa hartanah tersebut telahpun dipindahmilik kepada Saw Gaik Beow dan defendan kedua, dan atas kematian Saw Gaik Beow, bahagiannya telah dipindahkan kepada defendan ketiga, membawa implikasi bahawa Saw Gaik Beow telahpun mematuhi syarat pembayaran baki harga belian ke dalam mahkamah dalam masa yang diperuntukkan ia berbuat demikian (lihat ms 417A–C).

(4) Tiada sebarang pernyataan di dalam borang pindahmilik tanah menyatakan mahupun mencadangkan bahawa baki harga belian tidak dibayar sebagaimana diperlukan di bawah penghakiman tersebut. Sebaliknya, di bawah tajuk 'in consideration of' telah disebutkan dengan nyata bahawa pindahmilik tersebut dibuat menurut perintah Mahkamah Tinggi. Hujah plaintif bahawa pindahmilik tersebut terbatal kerana tiada balasan adalah tanpa merit (lihat ms 418B–D).

(5) Tidaklah mencukupi untuk plaintif semata-mata mengatakan tiada bayaran dibuat oleh Saw Gaik Beow. Tiada afidavit dari bekas peguamcara plaintif yang megendalikan kes ini menyatakan bahawa baki harga belian tidak dibayar. Tiada juga afidavit dari peguamcara semasa plaintif menyatakan bahawa suatu carian ke atas fail mahkamah berkaitan dengan guaman sivil tersebut menunjukkan bahawa tiada sebarang bayaran ke dalam mahkamah sebegitu telah dibuat. Beban bukti terletak pada

plaintif dan plaintif telah gagal membuktikan beban tersebut. Mahkamah ini menerima hujah defendan, atas imbangan kebarangkalian, bahawa plaintif tidak mungkin menandatangani borang pindahmilik dan menyerahkan geran tanah yang dikeluarkan jika baki harga belian tidak dibayar (lihat ms 18D–E, 419A–C).

(6) Walaupun dengan mengandaikan bahawa mahkamah tersilap dalam pendapat bahawa tuntutan plaintif adalah tanpa merit, mahkamah berpuashati bahawa plaintif bersalah kerana membiarkan kelewatan berlarutan dan tuntutan plaintif adalah melampaui had masa di bawah s 6(3) Akta Had Masa 1953 memandangkan lebih dari 12 tahun telah berlalu sejak tarikh terakhir bagi membuat bayaran baki harga belian ke mahkamah (lihat ms 419D–E).]

Notes

For cases on the intitulement on summonses, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) para 4581.

Cases referred to

Saw Gaik Beow v Cheong Yew Weng & Ors [1989] 3 MLJ 301 (refd)
Talbot v Blindell and Ors [1908] 2 KB 114 (distd)

Legislation referred to

Contracts Act 1950 s 26
Evidence Act 1950 ss 101, 102
Limitation Act 1953 s 6(3)
National Land Code s 340(2)(b)
Rules of the High Court 1980 O 7 r 2(1A), O 45 r 10

Karen Lai (*Shearn Delamore & Co*) for the plaintiffs.
Darshan Singh Khaira (*Darshan Singh & Co*) for the defendants.

Su Geok Yiam JC: This is an application vide an originating summons filed on 7 February 2002 (encl (2)) by the plaintiffs for declaratory reliefs and consequential orders against the defendants in respect of a piece of property arising from a judgement of the High Court dated 6 June 1989 in Penang High Court Civil Suit No 571 of 1978.

The facts and background of the plaintiffs' application are as follows:

At all material times and prior to 27 December 1990, the plaintiffs were the registered proprietors of a piece of land, Lot No 359, Section 10, Timur Laut District, Georgetown together with the premises thereon known as No 11–A, Perak Garden, 10150 Penang held under grant No 11775 ('the said property') in equal undivided shares.

On 8 November 1978, one Saw Gaik Beow, since deceased, ('the said Saw Gaik Beow') commenced proceedings vide Penang High Court Civil

A Suit No 571 of 1978 ('the said civil suit') against Cheong Yew Meng, the father of the plaintiffs, and the plaintiffs claiming for the subject property to be transferred to her pursuant to an alleged agreement entered into on or about 2 April 1964.

On 6 June 1989, Edgar Joesph Jr J (now FCJ rtd)) allowed the said Saw Gaik Beow's claim in the said civil suit and ordered judgment ('the said judgment') as follows:

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(1) that the alleged agreement dated 2 April 1964 constituted an agreement binding upon the plaintiffs;

(2) that upon payment of the balance purchase price less real property gains tax (if any) ('the said balance purchase price') by the said Saw Gaik Beow into court within 14 days from the date of the said judgement ('the said period') the agreement be specifically performed by the plaintiffs by executing a valid and registrable transfer of the said property in favour of the said Saw Gaik Beow;

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(3) that upon payment of the said balance purchase price the plaintiffs were to deliver or cause to be delivered to the said Saw Gaik Beow or her solicitors the issue document of title of the said property.

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The reasons for the said judgment are set out in *Saw Gaik Beow v Cheong Yew Weng & Ors* [1989] 3 MLJ 301.

On 19 June 1989, the plaintiffs filed a notice of appeal vide Supreme Court Civil Appeal No 02–250–89 to the then Supreme Court against the whole of the said judgment dated 6 June 1989.

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On 27 August 1990, the plaintiffs' notice of appeal was heard and dismissed by the then Supreme Court.

On 27 December 1990, the memorandum of transfer dated 2 October 1990 ('the said memorandum of transfer') in respect of the said property was registered ('the said registration') in favour of the said Saw Gaik Beow and the second defendant in one-half undivided share each.

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On 18 November 1992, after the death of the said Saw Gaik Beow, her one-half undivided share of the said property was transferred to the third defendant ('the subsequent transfer') in accordance with a distribution order dated 7 October 1992 and registered, accordingly.

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On 7 February 2002, the plaintiffs filed this application. In this application the plaintiffs are seeking, inter alia, the following reliefs:

(1) a declaration that the said Saw Gaik Beow had failed to effect payment of the said balance purchase price into court within the said period;

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(2) a declaration that the said memorandum of transfer and the said registration in favour of the said Saw Gaik Beow and the second defendant and the subsequent transfer in favour of the third defendant are void for want of consideration and/or breach of the said judgment;

(3) an order that the said memorandum of transfer, the said registration and the subsequent transfer be set aside forthwith;

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(4) an order that the second and third defendants in their capacity as the registered proprietors of one half undivided share each of the said property do execute a valid and registrable memorandum of transfer of

the said property in favour of the plaintiffs in equal shares and do transmit the duly executed memorandum of transfer together with the issue document of title in respect of the said property to the plaintiffs' solicitors within 14 days from the date of the order of court herein; and

(5) that the defendants do pay the costs of the proceedings.

On 14 April 2002, after hearing and considering the oral and written submissions of Miss Karen Lai, learned counsel for the plaintiffs, and the oral submissions of Mr Darshan Singh Khaira, learned counsel for the defendants, the court dismissed encl (2) with costs ('the said order').

The reasons why the court made the said order are as follows:

To begin with, contrary to O 7 r 2(1A) of the Rules of the High Court 1980 ('the RHC') which expressly requires the particular rule of court and provisions of written law under which the court is being moved to be stated, nowhere is it stated in the intitulement to the originating summons any law or any order let alone a specific provision or rule as the case may be of the relevant written law or the RHC which the plaintiffs are relying on.

The court noted that it is stated in para (ii) of the plaintiff's originating summons and para 14 of the plaintiffs affidavit-in-support (encl (1)) affirmed on 6 February 2002 that the said memorandum of transfer is void for want of consideration and/or in breach of the said judgment. The court also noted that it is stated in para 15 of the plaintiff's affidavit-in-support that the said registration is bad and invalid in law. The court further noted that in para 18 of the plaintiff's affidavit-in-support it is stated that the said Saw Gaik Beow 'in failing to abide by the terms and conditions of the said judgment of the High Court had not only been in breach of the said judgement of the High Court but in law is deemed to have abandoned the benefit of the said judgment of the High Court and that accordingly, the transfer and registration in respect of the said property are *void* in law and have no legal standing or effect whatsoever'.

However, it was only in the plaintiffs' written outline of submissions dated 14 October 2002 that it is stated for the very first time that the plaintiffs are seeking to rely on O 45 r 10 of the RHC, s 340(2)(b) of the National Land Code ('the NLC') and s 26 of the Contracts Act 1950 ('the Contracts Act').

Order 45 r 10 of the RHC

Order 45 r 10 of the RHC provides as follows:

Conditional judgment: Waiver (O 45 r 10)

A party entitled under any judgment or order to any relief subject to the fulfillment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgement or order, and, unless the court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have taken if the judgment or order had not been given or made.

In respect of O 45 r 10 of the RHC it is the plaintiffs' case that the said Saw Gaik Beow did not fulfil a condition of the said judgment in the said civil

A suit because she had failed to effect payment of the said balance price in respect of the said property within the said period. Miss Karen Lai submits that, therefore, the defendants are deemed to have abandoned the benefit of the said judgment pursuant to O 45 r 10 of the RHC.

It is clear from the said judgment that the said judgement was a
B conditional one in that the said Saw Gaik Beow could only obtain the benefit of the said judgment if the said Saw Gaik Beow had paid into court the said balance purchase price within 14 days from the date of the said judgment. Order 45 r 10 of the RHC provides that the fulfillment of this condition is a necessary prerequisite to relief. In my judgement, the fact that the said property has already been transferred to the, said Saw Gaik Beow
C and the second defendant and upon the demise of the said Saw Gaik Beow, her one-half undivided share had been transferred to the third defendant implies that the said Saw Gaik Beow had already complied with the condition as to payment into court of the said balance purchase price within the said period.

D In my judgement, the situation envisaged by O 45 r 10 of the RHC is different from the situation in the instant case. In the instant case, the defendants are not seeking to obtain the benefit of the said judgment by asking the court to allow them to enforce the said judgment, to wit, that the plaintiffs comply with the order in the said judgment that the said property
E be transferred to them and the issue document of title be delivered to the said Saw Gaik Beow. The reason is because the said property has already been transferred to the defendants. That is the benefit of the judgment which was obtained by the said Saw Gaik Beow in the said civil suit. In my judgment the submission of Miss Karen Lai that the defendants have abandoned the benefit of the judgment is, therefore, without merits.

F The English case of *Talbot v Blindell and Ors* [1908] 2 KB 114 is distinguishable on its facts. In that case the plaintiff, Miss Talbot, brought an action for possession, as lessor against the defendants, the representatives of the lessee of a coal mine. Walton J decided that she was entitled to re-enter upon the coal mine on the ground of forfeiture of the
G lease by breaches of covenant. Subsequently, the defendants applied to the court for relief against the order of forfeiture. The court granted the relief subject to the defendants doing three things. However, the defendants having performed part of the conditions declined to perform the remainder and desired to waive the relief. Walton J held that the court had no power to compel the defendant to perform the conditions and that the order for
H relief must, therefore, be treated as abandoned.

In this case, the defendants are not seeking to abandon or waive the relief which was sought by the said Saw Gaik Beow in the said civil suit. Neither are the plaintiffs saying that the defendants have abandoned or waived the relief because the plaintiffs have not transferred the said property
I to the said Saw Geok Beow and the said Saw Geok Beow has not fulfilled the condition which requires her to pay the said balance purchase price within the said period.

Section 340(2)(b) of the NLC and s 26 of the Contracts Act A

In respect of s 340(2)(b) of the NLC and s 26 of the Contracts Act, Miss Karen Lai submits that the memorandum of transfer dated 2 October 1990 in respect of the said property between the plaintiffs and the said Saw Gaik Beow and registered by the Pendaftar Hakmilik Tanah, Pulau Pinang, are void for want of consideration as provided for in s 26 of the Contracts B Act and therefore the transfer and the subsequent registration c have been effected by means of an insufficient or void instrument.

In my judgement, there is nothing in the copy of the Form 14A of the NLC exhibited as 'CML-2' in the plaintiffs' affidavit-in-support to indicate or even suggest that the said balance purchase price has not been paid in the manner as stated in the said judgement. On the contrary, it is expressly C stated on p 1 of 'CML-2' under the caption 'sebagai balasan' that the transfer was made in accordance with the said judgement as the words used are 'menurut perintah Mahkamah Tinggi (1) Pulau Pinang Guaman Sivil No 571 Tahun 1978 bertarikh 21 Oktober 1989 Jilid 30 Folio 32'.

Therefore, the contention of the plaintiffs that the transfer is void for D want of consideration and the subsequent registration of the transfer is void because it was effected by means of an insufficient or void instrument is without merits.

The court accepts the defendants' contention that it is not possible that the plaintiffs would have executed the memorandum of transfer in favour of E the said Saw Gaik Beow and also handed over the issue document of title to the said Saw Gaik Beow if the said balance of the purchase price had not been paid by the said Saw Gaik Beow. On the balance of probabilities, the court rules in favour of the defendants. This is because the burden of proof is on the plaintiffs and the plaintiffs have failed to discharge that burden. F

Section 101 of the Evidence Act 1950 provides as follows:

> 101 Burden of proof
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> (1) Whoever desires any court to give judgement as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. G
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> (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
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> ILLUSTRATIONS
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> (a) ....
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> (b) A desires a court to give judgment that he is entitled to certain land in the possession of B. By reason of facts which he asserts and which H B denies to be true.
>
> A must prove the existence of those facts.

Illustration (b) to s 101 applies to the facts in the instant case. Here the plaintiffs desire the court to give judgment that they are entitled to the said property in the possession of the third defendant by reason of facts which I they assert in their originating summons and affidavit and which the defendants deny to be true.

A Section 102 of the Evidence Act 1950 expressly stipulates that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. It is insufficient for the plaintiff to merely allege non-payment by the said Saw Gaik Beow. There is no affidavit from the plaintiffs' previous solicitors who were handling the matter to state that the said balance purchase price was not paid by the said B Saw Gaik Beow. There is also no affidavit from the plaintiffs' current solicitors stating that they had done a search on the court file pertaining to the said civil suit and the search showed that there was no such payment made into court. 'Exhibit 'CML-2' shows that the plaintiffs' previous solicitor was Johari bin Ahmad. In my judgment, the plaintiffs should have C filed an affidavit affirmed by Johari bin Ahmad in support of the plaintiffs' claim.

The court also rejected the plaintiffs' contention as to fraud and/or misrepresentation as set out in para D 6(viii) of the plaintiffs' further affidavit affirmed on 5 July 2002 and filed on the same day (encl (5)) as no particulars of the alleged fraud and/or misrepresentation were forthcoming.

D Finally, even assuming for a moment that the court is wrong in holding that the plaintiffs' claim is without' merits, the court is satisfied that the plaintiffs are guilty of inordinate delay and that the plaintiffs' cause of action, is time barred pursuant to s 6(3) of the Limitation Act 1953 as more than 12 years have elapsed since 20 June 1989 which is the last date for the E payment of the said balance purchase price by the said Saw Gaik Beow into court.

In the premises, the court dismissed the plaintiffs' claim with costs.

Plaintiffs' claim dismissed with costs.

F Reported by Sivapragasam Kumaran

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